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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

A.A. CORP. COMPL. SECT.
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[Signature]

QWEST CORPORATION,
COMPLAINANT,

DOCKET NO. T-01051B-09-0307
DOCKET NO. T-03267A-09-0307

VS.

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC., dba PAETEC BUSINESS
SERVICES,

RESPONDENT.

PROCEDURAL ORDER

BY THE COMMISSION:

On June 9, 2009, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint against McLeodUSA Telecommunications Services, Inc. ("McLeod"), asserting that McLeod's Wholesale Service Order Charge violates state and federal law and public policy and should be stricken from McLeod's Tariff because it is discriminatory, anticompetitive, and unjust or unreasonable ("Complaint"). Qwest asserts that McLeod assesses the charge of \$24.24 whenever an Arizona end-user telecommunications customer switches its intrastate telecommunications service provider from McLeod to Qwest and further asserts that McLeod assesses the charge only against Qwest.

On July 1, 2009, McLeod filed an Answer to Qwest's Complaint, denying many of Qwest's factual assertions, denying that Qwest is entitled to the relief requested in its Complaint, and asserting that the Commission should deny Qwest's Complaint.

On July 6, 2009, a Procedural Order was issued that, among other things, required the Commission's Utilities Division ("Staff") to appear and participate at the procedural conference scheduled therein and to lend its expertise in this matter, as it appears to raise policy issues.

On August 7, 2009, a procedural conference was held at the Commission's offices in Phoenix, Arizona. Qwest, McLeod, and Staff appeared through counsel. During the procedural conference,

1 Qwest and McLeod requested that this matter be resolved through the filing of cross Motions for
2 Summary Determination. Qwest and McLeod asserted that parallel cases are pending in Washington,
3 Iowa, and Utah; that the Washington Commission has agreed to resolve the case there through such
4 Motions; and that it would be preferable not to expend the resources for a hearing. Staff did not
5 object to the proposed process, but expressed a desire for notice to be filed in this docket if a hearing
6 is ordered in a parallel case. Qwest agreed to make such a filing.

7 On August 10, 2009, a Procedural Order was issued establishing a procedural schedule in this
8 matter and establishing requirements for the format and substance of the Qwest and McLeod filings.
9 The first filing required under the Procedural Order was a joint Stipulation of Material Facts, to be
10 made by November 18, 2009.

11 On November 10, 2009, Qwest and McLeod filed a Joint Motion for Modification of
12 Procedural Schedule requesting that the procedural schedule in this matter be modified to require
13 filing of the Stipulation by January 15, 2010, with the other filings to follow at the same intervals as
14 previously established. Qwest and McLeod asserted that the modification of the schedule would
15 allow for the parallel Washington Commission proceeding to be fully submitted. Qwest and McLeod
16 stated that they had consulted with counsel for Staff, who did not object to their request.

17 On November 12, 2009, a Procedural Order was issued modifying the procedural schedule for
18 this matter to require filing of the joint Stipulation by January 15, 2010, and adjust the other filing
19 requirements accordingly. The Procedural Order retained the previously established requirements for
20 the format and substance of Qwest's and McLeod's filings.

21 On January 15, 2010, Qwest filed a Motion for Extension of Time to File Stipulation of
22 Material Facts, on behalf of itself and McLeod, requesting that the deadline for filing the Stipulation
23 be extended to January 25, 2010. Qwest asserted that the parties needed additional time due to
24 unanticipated difficulty in reaching agreement as well as other commitments of counsel. No assertion
25 was made regarding Staff's position on the Motion. Nor was any update provided regarding the
26 progress of the parallel proceedings in other jurisdictions.

27 On January 20, 2010, a Procedural Order was issued extending to February 1, 2010, the filing
28 deadline for the joint Stipulation of Material Facts and scheduling a procedural conference for

1 February 17, 2010, to discuss the status of the parallel proceedings in other jurisdictions and how best
2 to proceed in this matter.

3 On February 1, 2010, a joint Stipulation of Material Facts was filed by the parties.

4 On February 17, 2010, a procedural conference was held at which Qwest, McLeod, and Staff
5 appeared through counsel. The parties revealed that a decision was expected imminently in
6 Washington, that the schedule in Iowa was suspended, that there was not yet a procedural schedule in
7 New Mexico, and that replies to Cross Motions for Summary Determination were the next step in
8 Utah. The parties agreed that the procedural schedule in this matter should be suspended, pending
9 receipt of a Washington order, which Qwest and McLeod hoped would result in their resolving their
10 dispute.

11 On August 18, 2010, Qwest filed notice of the decision issued in the parallel proceeding
12 before the Public Service Commission of Utah ("Utah PSC"), which was favorable to Qwest. Qwest
13 subsequently filed a copy of the Utah decision on September 13, 2010.

14 On January 12, 2011, a Procedural Order was issued scheduling a procedural conference for
15 February 10, 2011, at which the parties were to report on the status of the parallel proceedings in
16 other states and on any progress toward settlement of their dispute.

17 On February 10, 2011, a procedural conference was held as scheduled at the Commission's
18 offices in Phoenix, Arizona. Qwest, McLeod, and Staff appeared through counsel. Qwest reported
19 that a decision favorable to McLeod has been issued in Washington, and McLeod was directed to
20 docket a copy of that decision. Qwest and McLeod also reported that no action has been taken in the
21 other states' parallel proceedings, although the Utah PSC has granted a request for reconsideration of
22 its decision. Qwest and McLeod further reported that they are in negotiations for a new
23 interconnection agreement ("ICA") and, in that context, are actively negotiating toward settlement of
24 their dispute in this matter, but that the resolution of the dispute could take many months, as ICA
25 negotiations tend to be quite lengthy. It was determined that joint updates regarding the parties'
26 progress in negotiations will be filed in this docket every 90 days. The parties were advised that such
27 updates should include notice of any breakdown in negotiations that may occur and of any action
28 taken in other states regarding the parallel proceedings in those states.

1 On February 10, 2011, McLeod filed a copy of the decision issued by the Washington State
2 Utilities and Transportation Commission.

3 IT IS THEREFORE ORDERED that **Qwest and McLeod shall, every 90 days from today,**
4 **jointly file an update** regarding their progress toward resolving the dispute that is the subject matter
5 of the Complaint. If the negotiations between Qwest and McLeod break down or if any significant
6 development occurs in a parallel proceeding in another state, Qwest and McLeod shall include such
7 information in the next regular update.

8 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
9 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
10 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
11 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
12 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
13 Law Judge or the Commission.

14 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
15 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

16 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
17 Communications) applies to this proceeding and shall remain in effect until the Commission's
18 Decision in this matter is final and non-appealable.

19 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
20 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
21 hearing.

22 DATED this 11th day of February, 2011.

23
24
25 
26 SARAH N. HARPRING
27 ADMINISTRATIVE LAW JUDGE
28

1 Copies of the foregoing mailed/delivered
2 this 1/16 day of February, 2011, to:

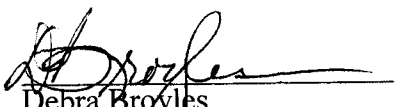
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21 Secretary to Sarah N. Harpring